June 14, 2017

Millanyo Woody # 227810
Kirkland C.I B-2 rm 1
4344 Broad River Rd.
Columbia, SC 29210

The Supreme Court
of South Carolina
Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RE: Millanyo Woody v. The State
C/A No.: 2017-000158

Dear Clerk,

Please find enclosed the petitioner pro se response.

Thank you

Millanyo Woody Sr.
6-14-2017

The petitioner is alleging a 5th, 6th and 14th Amendment violation which set forth the prima facia violation of my Constitional rights. Grounds are constitional dimension the fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and a omission inconsistent with the rudimentary demand of fair procedure

The following acts/omissions by trial counsel and judge constituted ineffective assistance of in violation of Strickland v. Washington, 104 S.Ct. 2052

Trial counsel was ineffective for failure to communicate to petitioner the precise terms of a plea deal/offer before going to trial.

As a general rule defense counsel has the duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused.

Here in this case trial counsel did not communicate the formal offer and precise terms to the petitioner. Trial counsel stated a offer that was never informed to petitioner on pg. 256 lines 19-25 and pg. 257 lines 1-3. Petitioner was arrested on August 5, 2010 for CSC 1st, Lewd Act Upon a child, and Obscene/Disseminating obscene material to minor 12Y or younger. At PCR hearing trial counsel said that petitioner wanted to go to trial which was true but the charges that petitioner wanted to go to trial on were dismissed... See pg. 344 in Appellate transcript lines 17-25 pg. 345 lines 1-11. Applicant went to trial for CSC 2nd degree and Lewd Act. The CSC 2nd was a direct indictment presented on 9-18-12, trial counsel never discussed it with petitioner. See pg. 350 in Appellate transcript lines 1-25... Glover v. United States, 531 U.S. 198, 203, 121 S. Ct. 696 (2001) Any amount of additional jail time has sixth Amendment significance. See transcript pg 256-257 lines 19-25 and 1-7.

Trial counsel was ineffective for failing to inform applicant of additional indictment.

The court asked whether applicant was arraigned on the indictment of CSC 2nd degree. Pg. 356 lines 1-18 also line 19-25. Applicant was never arraigned on that indictment. See lines on pg 368 of Judge Hayes Dissmissal, also pgs. 369-370. The State did a dismissal of indictment 2012-GS-23-7367 on the same day as trial (10-13-13). Applicant only knew of CSC 1st and Lewd Act indictment at trial. See pg 8 line 13-15.

The S.C. Supreme Court believe that notice and preparation are inextricably linked concepts as fairness and due process require that a criminal defendant receive sufficient notice of the charge against him to enable him to prepare a defense. In re Corey B., 291 S.C. 108, 109, 352 S.E.2d 470 (1987). See Appellate transcript pgs. 340 lines 6-25, and pg. 341 lines 1-25. Also see pg 342 lines 1-11.

Trial counsel was ineffective for failing to object to, or move to quash the indictments for being unconsitutionally overbroad and vague.

The applicant in present case contend that his ability to present a defense was hindered as the broad brush of the indictments was 5 years with no specifity. Trial counsel failed to object to the indictment which caused the applicant to be denied a fair trial. The indictments alleged that the offenses occurred at unspecified time over a 5 year period. It was virtually impossible to try and defend against accusations spanning such a vast period of time. Applicant was undoubtley taken by surpise and significantly limited in his ability to combat the charges against him. Simply stated, there was no way for applicant to know whether he could plead an aquittel. Gentry, 610 S.E. 2d at 500. See Baker v. State, 769 S.E. 2d 860 2-11-2015

STATE OF SOUTH CAROLINA	)	CHECKLIST
COUNTY/CITY OF GREENVILLE	)	
	)	**TRIAL COURT:**
Millanyo Antonio Woody	)	☒ GENERAL SESSIONS COURT
Name of Defendant	)	☐ MAGISTRATE COURT
	)	☐ MUNICIPAL COURT

CASE NUMBER/CHARGE:
I481853 Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree
I481854 Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I481855 Obscene / Disseminating obscene material to a minor 12 Y or younger

CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for **ALL GENERAL SESSIONS** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE.** The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

☑ **BAIL PROCEEDING/** ☐ **FIRST APPEARANCE (NON-BAILABLE OFFENSES)**

1. Form used at bail proceeding
   - ___a. Bond Form I (personal recognizance)
   - ✓b. Bond Form II (surety, cash, percentage)
   - ___c. None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
   - ✓a. Warrant for arrest will be issued for violation of any condition of bail bond order.
   - ✓b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
   - ✓c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than $5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than $1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
   - ✓a. Orally
   - ✓b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. ✓Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
   - ✓a. Charges against defendant and nature of the charges.
   - ✓b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
   - ✓c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **The Greenville County Public Defender's Office located at the Greenville County Courthouse, 305 E. North Street, Greenville, SC 29601** for indigency screening. Defendant is responsible for a statutory fee of **$40.00** for indigency screening.
6. ___In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. ✓If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

August 5, 2010
Bond Hearing Date

B. Gibson
JUDGE'S SIGNATURE

SCCA/507(Rev.7/2009)
BC23201

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

A

The State of South Carolina,

-vs-

ORDER FOR BAIL

Millano A. Woods
Defendant,

DOB 1/24/95 SSN 249-29-8244

FILED-CLERK OF COURT
PAUL R. WICKENSIMER
GREENVILLE CO. SC
2010 AUG 24 AM 10:37

IN RE: CHARGE(S):	WARRANT NUMBER(S):
CSC w/Minor 1st, Lewd Act on	I 481853
Minor; Dissemination Obscene	I 481854
Material to Minor	I 481855

This matter is before me on application for bail. The Defendant is now confined in the Greenville County Detention Center under the above warrant(s) charging the Defendant with the offense(s) listed above. It appears to the Court that bail may be granted for said offense(s).

The Defendant moves and the State consents to a bond as set forth below on the basis that the State's evaluation and investigation of the case to date indicates no substantial likelihood of the Defendant's being a flight risk or danger tomthe community such that would not be protected by said sum.

IT IS ORDERED that the Defendant be and is hereby granted bail in the amount of $ 10,000 with one or more sufficient sureties to be approved by the:

( ) Clerk of Court
(X) Magistrate
( ) City Recorder

and a regognizance bond in the amount of $ ~~0~~ to be signed by the Defendant.

IT IS FURTHER ORDERED that as a special condition of this bail:

1) House Arrest
2) No contact with any minors under 18 year.

JUDGE, THIRTEENTH ~~JUDICIAL~~ CIRCUIT

2158

Greenville, South Carolina
23 Aug, 2010

I SO MOVE:

Christopher T. Posey/ 235-0150
Print Name/Telephone Number

I CONSENT

Ryan Holloway
Print Name
Assistant Solicitor

FAXED
Date: 8-24
To: Jail Foster
By: JS

THE STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE THE STATE v. MILLANYO A. WOODY, DEFENDANT.	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT Warrant/Indictment Nos.: I481853; I481854; I481855 **NOTICE OF MOTION AND MOTION FOR THE PRODUCTION AND INSPECTION OF EVIDENCE AND INFORMATION WHICH MAY LEAD TO EVIDENCE** **(Brady Disclosure)**

To: ___,

YOU WILL PLEASE TAKE NOTICE that as counsel for the above named Defendant, we are requesting, under the authority of Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 364 (1959); Alcorta v. Texas, 355 U.S. 28 (1957); Mooney v.Holohan, 294 U.S. 103 (1935); Giglio v. U.S., 405 U.S. 150 (1972); Moore v. Illinois, 408 U.S. 786 (1972); and, State v. Bryant, 307 S.C. 458 (1992), that your office supply to us, all information in the custody, possession, control or knowledge of the State, private parties retained by the State, or any law enforcement agency involved in the investigation of the above captioned case which may be favorable to the Defendant with regard to the offense with which he has been charged.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: D Manigault SB

Dorothy Manigault, Esq.
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Date: August 18, 2010

THE STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
THE STATE	)	Warrant/Indictment Nos.: I481853; I481854; I481855
v.	)	**NOTICE OF MOTION AND MOTION TO PRODUCE PURSUANT TO RULE 5 OF THE RULES OF CRIMINAL PROCEDURE (Rule 5 Disclosure)**
MILLANYO A. WOODY,	)	
DEFENDANT.	)	

To: _____, Assistant Thirteenth Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that the above named Defendant by and through undersigned counsel, Dorothy Manigault, requests compliance by the State with the provisions of Rule 5 of the Rules of Criminal Procedure regarding any and all charges presently pending against the Defendant and/or any and all criminal charges which the State intends to introduce as evidence in the trial of the Defendant.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: D Manigault PS

Dorothy Manigault, Esq.
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Date:August 18, 2010

THE STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT
THE STATE	)	Warrant/Indictment Nos.: I481853; I481854; I481855
v.	)	**NOTICE OF MOTION AND MOTION TO PRODUCE PURSUANT TO RULE 5 OF THE RULES OF CRIMINAL PROCEDURE (Rule 5 Disclosure)**
MILLANYO A. WOODY,	)	
DEFENDANT.	)	

To: _____, Assistant Thirteenth Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that the above named Defendant by and through undersigned counsel, Dorothy Manigault, requests compliance by the State with the provisions of Rule 5 of the Rules of Criminal Procedure regarding any and all charges presently pending against the Defendant and/or any and all criminal charges which the State intends to introduce as evidence in the trial of the Defendant.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: D. Manigault PB

Dorothy Manigault, Esq.
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Date:August 18, 2010

Greenville County

Office of the Clerk of Court

Greenville, South Carolina

Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

September 17, 2015

Millanyo Woody #227810
Perry C.I.
430 Oaklawn Rd.
Pelzer, SC 29669

Dear Mr. Woody:

Your letter postmarked 9/3/2015 was forwarded to us by the Solicitor's Office. Enclosed please find the copy you requested for the warrant number you provided. This information has also been forwarded to SCDC Inmate Records.

Sincerely,
Clerk of Court
Greenville County General Sessions

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: MILLANYO ANTONIO WOODY

Address: 593 SAXON AVENUE

City: SPARTANBURG State: SC ZIP :29301-1911

SS#: 247278244 Sex: M Race: B

Date of Birth: January 24, 1975

State: SC Driver's License #: 007369584

Indictment # : 2012GS2307387

Warrant/Ticket # I481853

No Warrant:

Offense Code: 0385

Offense Name: Sex, Crim Sex Cond, 1st D

Date of Arrest: August 5, 2010

FILED

OCT 17 2013

Clerk of Court
Greenville County

DATE OF DISPOSITION: 10/14/2013

DISPOSITION:

_____ 1. Guilty Plea

_____ 2. Trial (Guilty)

_____ 3. Trial (Not Guilty)

* X 4 (Dism/Nol Pros/Pros Ended

* _____5. Judicial Commitment

_____6. Judicial Dismissal

* _____ 7. Remanded

_____ 8. Dismissed at Prelim

_____ 8. No Bill

* _____ 9. Failure to Appear

* _____ 10. Other

* Explain: 04-B INSUFFICIENT EVIDENCE - BRD

Judge:

Ct. Reporter:

Defense Attorney: MANIGAULT, DOROTHY

Solicitor: Judy Munson

64040

Offense Code: 0385

Offense Name: Sex, Crim Sex Cond, 1st D

Sentence:

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

8/5/2010

DOCKET NO. 2012-GS-23- 037386A
JMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September **TERM 2012**

10-16-13

THE STATE

vs.

MILLANYO ANTONIO WOODY

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
B/M
DOB: 1/14/1975
SS# 247-27-8244
2012GS2307386A

ACTION OF GRAND JURY
TRUE BILL

Susan Tompkins
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty
Bobby G. Stanford
10/15/2013
Foreperson of Petit Jury
Date:

0396
0385

Indictment for

CRIMINAL SEXUAL CONDUCT W/ A MINOR SECOND DEGREE (OLD)

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT W/ A MINOR SECOND DEGREE
(OLD)

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MILLANYO ANTONIO WOODY did in Greenville County, between the 4th day of December 2008 and the 22nd day of April 2010 commit a sexual battery on M. J. P., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of §16-3-655(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

007305

DOCKET NO. 2012-GS-23-
JMM

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

8/5/2010

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September **TERM 2012**

THE STATE

vs.

MILLANYO ANTONIO WOODY

ARREST WARRANT NUMBER
I481854

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Bobby G. Stuck

10/15/2013

Foreperson of Petit Jury
Date:

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MILLANYO ANTONIO WOODY did in Greenville County, between the 4th day of December 2005 and the 22nd day of April 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of M. J. P., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

Trial counsel's error in failing to object to jury's selection and applying the rule in Batson is apparent on the face of the trial transcript of the jury selection proceeding. See transcript pages #23-# 29. Trial counsel's failure to object from looking at the record will show that this Batson violation was obviously valid that any competent lawyer would have objected. No further evidence is needed to determine wheter counsel was ineffective for not havi done so. Based upon her failure to object, standing alone, establish her ineffectiveness. See also State v. Evins, 373 S.C. 404, 415, 645 S.E. 2d 904, 909 (2007). When one party strikes a member of a cognizable racial group or gender the trial court must hold a Batso hearing if the opposing party request one. State v. Haigler, 334 S.C 623, 515 S.E. 2d 88, 90 (1999). In [redacted] M.W. the case at bar, counsel failed to object thereby failing to get a ruling and preserve for appellate court review.

Wheter a Batson violation has occurred must be determined by examing the totality of facts and circumstances in the record. Edwards, 384 S.C. at 509, 682 S.E. 2d at 822

Lesser Offense

- Trial counsel failed to request trial court to charge the lesser include offenses of the crimes charged.

Trial counsel's actions prejudiced the petitioner and unduly subjected him to federa law violations and U.S. Supreme Court precedents. In Keeble v. United States, 412 U.S. 2 93 S. Ct. 1993 (U.S. S.D. 1973) the Supreme Court stated Although the lesser included offens doctrine developed at common law to assist the prosecution in cases where the evidence failed to establish some element of the offense originally charged, it is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and aquit him of the greater. See Sansone v. United States, 380 U.S. 343, 85 S.Ct. [redacted] 1004 (1965)
Berra v. United States, 351 U.S 131, 76 S.Ct. 685 (1956)
Stevenson v. United States, 162 U.S. 313, 16 S.Ct. 839 (1896) Petitioner should have been granted a lesser charge to the jury.

As far back as the year of 1896, the U.S. Supreme Court ruled in Stevenson v. United State supra (In a case where some of the elements of crime charged themselves constitute a less crime, the defendant if the evidence justified it, would no doubt be entitled to an instructio which would permit a finding of guilt of the lesser offense). The U.S. Supreme Court ruled in Spaziano v. Florida, 468 U.S. 447, 104 S. Ct. 3154 (1984) (the absence of a lesser included instruction increases the risk that the jury will convict... simply to avoid setting the defendant free... the goal of the "Beck Rule" in other words is to eliminate the distortion of the factfinding process that is created when the jury is forced into an all-or-nothing choice between the charged crimes of CSC 2nd w/minor and Lewd Act on minor and innocence. See Beck v. Alabama, 447 U.S. 625, 100 S. Ct. 2382 (1980); Keeble v United States, supra Petitione asserts Trial counsel failed to request a lesser included offense jury charge which not only subjected him to due process rights violations under the 14th Amendment, but also clearly subjected him to equal protection rights violation under the 5th Amendment of the U.S. Const. As the result of the S.C. Supreme Court's ruling and mandates in Heyward supra; State v. Lambright, supra, and State v. Drafts, supra. The very same const. equal protection rights .... should have been offered to petitioner.

(A) Petitioner asserts, he was denied a substantial Constitutional Right of Effective assistance of Counsel in violation of the 6th Amendment of the U.S. Const.

State of South Carolina) Court of Common Pleas
County of Greenville) #

Millanyo A. Woody) Motion For
Applicant) Execution of
) Subpeona
Vs.)
State of South Carolina)
Respondent)

Comes Now, Millanyo A. Woody # 227810 petition this Honorable Court to execute a subpeona's pursuant to the S.C. PCR statues and any other rules that apply in this case. Said name below are potential witness in this cause of action. Applicant is entitled to cross-examin witness in his up coming PCR hearing because the burden of proof is on the Applicant

The list of the witness and address are as follows

Minor

Address Unknown

I Millanyo A. Woody # 227810 Certify and verify under penalty of perjury that the forgoing is true and correct.

x Millanyo A. Woody

State of South Carolina
County of Greenville
Millanyo Woody 227810
Applicant

v.

The State of South Carolina
respondent

In the Court of Common Pleas
for the 13th Judicial Circuit Court

C/A No # 2015-CP-2305718

Notice of Motion to Amend Procedural History

Now come the applicant moving the Court to Amend his PCR application, pursuant to the South Carolina Rules of Civil procedure rule 71.1(d) and South Carolina Post-Conviction Relief Act.

Procedural History

Applicant Millanyo Woody was arrested in Greenville, S.C. on August 5, 2010, and charged with CSC 1st degree, Obsecene Material to a minor 12Y or younger, and Lewd Act upon a child under 16 years of age. [redacted] at that time was a minor and stated that these crimes happened between December 4th 2005 and April 22, 2010. The Greenville County grand jury indicted applicant for CSC 1st, CSC 2nd, and Lewd Act in September of 2012, and case came on for trial before a jury

in the Greenville County Court of General Sessions on October 14, 2013. The honorable G. Edward Welmaker was the presiding judge. On October 14th, 2013 the CSC 1st degree was dismissed and jury convicted applicant on CSC 2nd w/minor and Lewd Act upon a minor, and the court sentenced applicant to 177 month on CSC 2nd and 177 months on Lewd Act ran concurrent. On appeal applicant's appeal for direct appeal was dismissed submitted December 1, 2014 - Filed January 28, 2015 Opinion No. 2015-UP-056, Appellate Case No. 2013-002317. The only Issue before the Court of Appeals was whether the trial judge erred in failing to quash the indictments for being consititutionally overbroad and M.W vague.

Conclusion

For the forgoing reasons applicant's PCR should be amended said Procedural History is meritorious and support the original claims futhter.

Dated: February 15, 2016

Millanyo A. Woody

State of South Carolina
County of Greenville
Millanyo Woody 227810
applicant
V.
The State of South Carolina
respondent

In the Court of Common Pleas
for the 13th Judicial Circuit Court
C/A No # 2015-CP-2305718

Certificate of Service

I, Millanyo Woody # 227810 certify that I have served a copy of my PCR Amendment to the respondent at the below address by placing it in the hands of the Perry Correctional mailroom for mailing postaged prepaid.

Paul Wickensimer
Clerk of Court
305 E. North St. Rm. 232
Greenville, S.C. 29601-2120

I, Millanyo Woody # 227810 certify and verify under the penalty of perjury that the for going is true and correct. 28 U.S.C.A § 1746

Millanyo A. Woody

2-15-16

Millanyo Woody 227811
Perry C.I Q 1B 223
430 Oaklawn Rd.
Pelzer, S.C. 29669

Micheal D. Brown, Esquire

Please do not file anything on my behalf with any court. I have filed a complaint against you at this time with The Supreme Court of South Carolina Office of Disciplinary Counsel. It would be a conflict of interest to let you stay on my case. Thank you for respecting this matter.

February 23, 2016

Millanyo A. Woody

copies sent:
Paul Wickensimer
305 E. North St.
Greenville, S.C. 29601
Clerk of Court

The Supreme Court of South Carolina
office of Disciplinary Counsel
P.O. Box 12159
Columbia, S.C. 29211

File No# 16-DE-L-0182

Micheal Brown
145 N. Church St Rm 2
Spartanburg, S.C. 29

State of South Carolina
County of Greenville

Millanyo Woody # 227810
Applicant

v.

The State of South Carolina
Respondant

In the Court of Common Pleas
for the Thirteenth Judicial Circuit Court
C/A No # 2015-CP-2305718

Notice of Motion to Amend
PCR Application

Now come the applicant, moving the Court to Amend his PCR application, pursuant to the South Carolina Rules of Civil procedure rule 71.1(d) and the South Carolina Post-Conviction Relief Act.

Applicant request the following grounds be included in his PCR Application.

The applicant is alleging a 5th, 6th and 14th Amendment violation which set forth the prima facia violation of my constitutional rights. Grounds are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and a omission inconsistent with rudimentary demand of fair procedure.

The following acts/omissions by trial counsel consituted ineffective assistance of counsel in violation of Strickland v. Washington, 104 S.Ct. 2052

Trial counsel was ineffective for failing to call a medical expert to challenge the state's medical evidence presented at trial.

Trial counsel was ineffective in failing to investigate and present the testimony of a gynecological expert witness. Applicant can show that trial counsel was deficient and counsel's deficiency caused prejudice. Stalk v. State 681 S.E. 2d 592, 593 (2009)

Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Strickland 466 U.S. at 691, 104 S.Ct. 2052. At a minimum, Counsel has the duty to interv potential witnesses and to make an independant investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E. 2d 590, 597 (2007) (emphasis omitted)

Applicant was tried and convicted on a CSC 2nd w/minor and Lewd Act on a minor 2012-GS-2307386A and 2012-GS-2307385 on 10-14-2013.

On July 16, 2013 which was the original trial date, trial counsel filed for a notice and motion for continuance. On the basis of the Medical Repor of the alleged victim which was provided to the defense on July 09, 2013

Applicant is agruing trial counsel was ineffective for failing to investigate and present testimony of a gyncological expert witness during trial. Trial counsel filed a notice for continuance on July 16, 2013 after receiving the Medical Report of alleged victim provided on July 9, 2013. Trial counsel never showed applicant the medical report or discussed having a expert witness for the defendant. Applicant was originally arrested for CSC 1st w/ minor, Obscence material to minor 12Y or younger, and Lewd Act upon a minor.

While waiting for trial to begin applicant noticed that he was on trial for CSC 1st and CSC 2nd degree, plus Lewd Act upon a child. The charges were high lighted on a court docket in front of applicant on the table. Trial counsel never informed applicant of additional indictment. Trial counsel told applicant that he could go home do to the continuance. After July 16, applicant never talked to trial counsel again until October 14, 2013 the day trial began. At trial on October 14, 2013 the solicitor dismissed CSC 1st due to lack of evidence. Applicant was tried on CSC 2nd and Lewd Act upon a chil The jury found applicant guilty on both charges and was sentenced to 177 mon for each charge ran con current. On October 15, 2015 applicant received his motion for discovery (Rule 5 disclosure) in it applicant noticed the medical report that was never shown or discussed with applicant, also there was a copy of the notice and motion for continuance. The notice stated in sho " Defendant is entitled to review the evidence and obtain the services of any expert witness especially regarding the Medical Report of the alleged vict SEE Exhibit (A)

Counsel did not consult with an expert prior to trial even though she knew the State would attempt to admit evidence of a physical trauma and counsel did not provide a legitimate trial strategy for failing to consu with an expert before trial or call a medical expert witness to testify at trial. U.S.C.A. Const. Amend 6

U.S. Supreme Court has held that the defendant must have a fair opportunity to present his defense; requiring the state to provide the basic tools for an adequate defense to an indigent defendant. Bailey v. State 309 S.C. 455. The state is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the services of experts necessary to meaningful defense.

If it were not for trial counsel deficent performanee from failing to investigate and present testimony of a gynecological expert there's a reasonable probability that the proceeding / jury trial would have been diffrent. See Reeves v. State 2015 WL 700853.

Conclusion

For the forgoin reasons applicant's PCR should be amened said additional arguments are meritorious and support the original claims futher

Dated: 1-18-16

Millanyo A. Woody

Exhibit

(A)

STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS COURT
	)	
COUNTY OF GREENVILLE	)	2012-GS-23-7385 thru 7387
State,	)	
	)	
vs.	)	**NOTICE AND MOTION FOR CONTINUANCE**
	)	
Millanyo Woody,	)	
	)	
Defendant	)	
	)	

The Defendant, Millanyo Woody, by and through his undersigned attorney, Dorothy A. Manigault, makes this motion for a continuance. The case is scheduled for a jury trial on Tuesday, July 16, 2013.

The undersigned attorney is requesting a continuance from the trial scheduled for Tuesday, July 16, 2013, on the basis of the Medical Report of the alleged victim was provided to the defense on July 9, 2013.

The motions for discovery (Rule 5 disclosure) was filed on August 18, 2010, along with a Brady Motion. The Defense received the initial discovery material including incident reports, statements and criminal history on October 26, 2010. No additional discovery was received from the State until a request was made on July 9, 2013, regarding any other discovery material.

The Defendant is indicted for Criminal Sexual Conduct with a Minor, 1st Degree, Criminal Sexual Conduct with a Minor, 2nd Degree, and Lewd Act On A Child. The Defendant is entitled to review the evidence and obtain the services of any expert witness especially regarding the Medical Report of the alleged victim.

The Defendant has not been able to procure the services of any expert at this time, due to no fault of his own.

NOW, THEREFORE, IT IS requested that this case be continued and the trial rescheduled after 45 days from the date of this Order.

IT IS SO ORDERED.

Dorothy A. Manigault
Attorney for Plaintiff
522 N Church Street
P. O. Box 392
Greenville, SC 29602
(864) 235-7073 / 235-9630 (fax)
manigaultdam@aol.com

July 16, 2013
Greenville, South Carolina

I481854
I481853
2012GS2307386A

STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS COURT
	)	13th Judicial Circuit
COUNTY OF GREENVILLE	)	2012-GS-23-7385 thru 7387
The State,	)	
vs.	)	**ORDER FOR CONTINUANCE**
Millanyo Woody,	)	
Defendant(s).	)	

FILED CLERK OF COURT
2013 JUL 16 AM 10:22

This matter came before me on Motion of the Defendant's attorney for a continuance.

The case is scheduled for jury trial on Tuesday, July 16, 2013, in Greenville County General Sessions Court.

It appears that the Defense needs additional time to obtain the counsel/services of an expert witness on behalf of the Defendant regarding a medical report that was revealed through discovery on July 9, 2013.

NOW, THEREFORE, IT IS ORDERED that this case be continued, and the trial be rescheduled after 45 days from the date of this Order.

IT IS SO ORDERED!

Presiding Judge
Thirteenth Judicial Circuit

July 16, 2013

Greenville, South Carolina

State of South Carolina
County of Greenville

Millanyo Woody # 227810
Applicant

V.

State of South Carolina
Respondent

Court of Common Pleas
for the Thirteenth Judicial Circuit Cou
C/A No # 2015-CP-2305718

Certificate of Service

I, Millanyo Woody # 227810 certify that I have served a copy of my PCR Amendments to the respondents at the below address by placing it in the hands of the Perry Correctional mailroom for mailing postaged prepaid.

Paul Wickensimer
Clerk of Court
305 E. North St. Rm 232
Greenville, S.C. 29601-2120

I, Millanyo Woody # 227810 certify and verify under the penalty of perjury that the forgoing is true and correct. 28 U.S.C.A. § 1746

(6)

1-18-16

State of South Carolina
County of Greenville

Millanyo Woody # 227810
Applicant

v.

The State of South Carolina
Respondant

In the Court of Common Pleas
for the 13th Judicial Circuit Court

C/A No # 2015-CP-2305718

Notice of Motion to Amend
PCR Application

Now come the applicant, moving the Court to Amend his PCR application, pursuant to the South Carolina Rules of Civil procedure rule 71.1 (d) and the South Carolina Post-Conviction Relief Act.

Applicant request the following grounds be included in his PCR Application.

The applicant is alleging a 5th, 6th and 14th Amendment violation which set forth the prima facia violation of my Constitutional rights. Grounds are constitutional dimension. The fundamental defects alleged are standards that require establisment of a complete misscarriage of justice and a omission inconsistent with rudimentary demand of fair procedure.

The following acts/omission by trial counsel consituted ineffective assistance of counsel in violation of Strickland v Washington, 104 S.Ct 205;

Trial counsel was ineffective for failing to object or move for a mistrial in response to bolstering testimony given by Dr. Henderson.

Trial court qualified Dr. Henderson in the field of child abuse pediatrics. She, Dr. Henderson testified as an expert witness in examination, diagnosis and treatment of child sexual abuse. See transcript #pgs 158- # 163 L. 6

Dr. Henderson testified that she saw the victim twice, once in May of 2006 and then again in May of 2010 at the Julie Valentine Center in Greenville.

The trial court explained to the jury that when a witness testifies that the witness can't give an opinion. They can testify of what they saw or expirienced or sensed in some way. But there is an exception when a witness has been qualified because of education and expirience in any field. There're permitted to give an opinion in that area of their expertise and the basis of that opinion. Transcript # pg 163 L. 13-19

The solicitor on Direct examination asked what were her findings as to the phsical examination in May 2006.

Dr. Henderson testified that in May 2006 her pysical examination was normal. The victim had shared some concerns about her being --- someone coming in while she was showering and about that person touching her genital area on top of her clothes.

On Direct examination pg# 174 L. 6-12 in transcript Dr. Henderson was asked do you have an opinion about how victim got that injury? Her answer was, Well, I think based on the history that she had shared with me and the findings on her exam, including the lab work that we did, that this was due to a penetrating injury, and I felt it was consistent with the disclosure that she made.

Dr. Henderson testified that on May 13, 2010 she and the allege victim had a conversation about what happened to her and she testified to what the victim told her. Dr. Henderson presented a drawing for the jury that had a tore hymen at the 9 o'clock position. Dr. Henderson wasasked if she could date the tear, she stated "No, but it happened between 2006 and 2010." See transcript pg# 176 L. 8-9

Dr. Henderson also testified that the victim had a sexual transmitted diease called trichomaniasis (See pg# 175 L. 13-23) Applicant received the medical report on October 15, 2015 it showed nothing about any sexual transmitted diease but it reported an abscess on the left buttocks which she prescribed Bactorban for the abscess. The state asked Dr. Henderson did she have an opinion about how the victim got injured. Dr. Henderson stated Well, I think based on the history that she had shared with me and the findings on her exam, including the lab work that we did, that this was due to a penetrating injury and I felt it was consistent with the disclosure that she had made. pg# 175 L. 6-14.

The law is clear that it is improper for a witness (expert) to give testimony as to his or her opinion about the credibility of a child victim in a sexual abuse matter. State v. Hill, 394 S.C. 280, 294, 715 S.E. 2d 368, 393-94, 377 S.E. 2d 298, 302 (1989); State v. Dempsey, 340 S.C. 565, 568-71, 532 S.E. 2d 306, 308-09 (Ct. App 2000)

There is no other way to interpret those comments other than to mean that Dr. Henderson believed victim was truthful, See State v. Chavis, 412 S.C. 101, 109, 771 S.E. 2d 336, 340 (2015)

The applicant is relying on Mangal v. State Op. No 5372 (Ct. App. filed December 30, 2015 where Dr. Henderson testified as an expert witness. In this case and my case. Dr Henderson have testified to the same exact testimony verbatim see trans pg# 179 L. 6-12 which vouched for victim's credibility. If it was not for trial counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding/jury trial would have been different.

Trial counsel allowed Dr. Nancy Henderson to testify about the victim's credibility. To allow the person who examined the child to testify to the characteristics of victims run the risk that the expert will vouch for the victim's credibility. State v. Anderson, Op No. 27558 (S.C. Sup Ct. filed August 5, 2015)

An expert testimony may intrude upon the jury's sole provilence to determine the credibility of a witness. State v. Taylor, 255 S.C. 268, 178 S.E 2d 244 (1970). While "experts are permitted to give an opinion they may not offer an opinion regarding the credibility of others." State v. Kromah 401 S.C 314 727 S.E. 2d at 449 (2013) citing State v. Hill, 394 S.C. 280, 715 S.E. 2d 368 (Ct. App 2011)

After Kromah supra, it is no longer acceptable for an expert witness to indicate in any way that he or she believes the victim. The Kromah Court specifically discussed the impropriety of this type of testimony and how it attempts to convert the expert witness in a human truth detector whose opinions of the truth are valuable and suitable for jury's consumption.

Trial counsel's failure to object to the vouching / bolstering of the allege victim was a violation of the 6th Amendment which denied me a fair trial. There was no way I could receive a fair trial with a doctor / expert witness vouching for the credibility of a child.

Requested relief - New Trial

Conclusion

For the forgoing reasons applicant's PCR should be amened said additional arguments are meritorious and support the original claims fuhter.

Dated: 2-2-16

Millanyo A. Woody

State of South Carolina
County of Greenville

Millanyo Woody # 227810
Applicant

V.

State of South Carolina
Respondant

Court of Common Pleas
for The 13th Judicial Circuit Court

C/A No # 2015-CP-2305718

Certificate of Service

I, Millanyo Woody # 227810 certify that I have served a copy of my PCR Amendments to the respondents at the below address by placing it in the hands of the Perry Correctional mailroom for mailing postaged prepaid.

Paul Wickensimer
Clerk of Court
305 E. North St. Rm 232
Greenville, S.C. 29601-2120

I, Millanyo Woody # 227810 certify and verify under penalty of perjury that the forgoing is true and correct. 28 U.S.C.A § 1746

Millanyo A. Woody

2-2-16

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Millanyo A. Woody, #227810, Applicant, v. State of South Carolina, Respondent.	)	2015-CP-23-05718 **RETURN**[1]

In response to the post-conviction relief application filed on September 17, 2015, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the September 2012 term of the Greenville County Grand Jury for one (1) count of a Lewd Act Upon a Child (2012-GS-23-07385) and one (1) count of Criminal Sexual Conduct with a Minor, Second Degree (2012-GS-23-07386A). Dorothy Manigault, Esquire, represented him. On October 14, 2013, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable G. Edward Welmaker sentenced Applicant to confinement for one hundred seventy-seven (177) months (14 years, 9 months).

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

[1] Respondent requests counsel be appointed.

dismissed Applicant's appeal. State v. Woody, Op. No. 2015-UP-056 (filed on January 28, 2015). The Remittitur was issued on February 13, 2015.

II.

In his application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
    a. "Failing to move to quash his indictments which were unconstitutionally overbroad and vague"
        i. "The indictments alleged the offense occurred at an unspecified time over a 5 ½ years period. It was virtually impossible to try and defend against accusations spanning such a vast period of time."
        ii. "Given the expansive time frame and lack of specificity as to this time frame, the court can only conclude applicant was prejudiced by the defects in the indicments (sic)."
    b. "Failure to communicate to applicant the precise terms of a plea deal/offer before going to trial"
        i. "There is a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time."
    c. "Ineffective for failure to object/challenge the state's preemptory challenge that violated Equal Protection Clause reconized (sic) in Batson v. Kentucky 476 U.S. (sic) and it's (sic) progeny"
        i. "In the selection of the petit jury, the State used one of its ten peremptory challenges to excuse a black member of the venire."
        ii. "The Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on the account of their race..."
    d. "Failing to request trial court to charge the lesser included offense of the crimes charged"
        i. "Trial counsel's actions prejudiced the petitioner and unduly subjected him to federal law violations and U.S. Supreme Court precedents."
        ii. "...Subjected him to a due process rights violations (sic) under the 14th Amendment, but also subjected him to equal protection rights violation under the5th Amendment of the U.S. Constitution."

Applicant subsequently amended his application to include the following additional amendments:

e. "Trial counsel was ineffective for failing to call a medical expert to challenge the State's medical evidence presented at trial."
   i. "...failing to investigate and present testimony of a gynecological expert witness."
f. "Trial counsel never informed applicant of additional indictment."
g. "Trial counsel was ineffective for failing to object or move for a mistrial in response to bolstering testimony by Dr. Henderson."

2. "Applicant was denied the right to due process and a fundamentally fair trial in that the State introduced a witness who used false, perjured and misleading testimony in violation of the Fifth, Sixth, Eight, and Fourteenth Amendments of the U.S. Constitution."
   a. "Counsel failed to object to the use of false, perjured, and misleading testimony submitted by the State."
   b. "Applicant (sic) trial was rendered fundamentally unfair by his attorney and prosecutorial misconduct."

For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's first allegations as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue.

IV.

Respondent interprets Applicant's second claim as an allegation that he was also denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would

entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

V.

Applicant further alleges prosecutorial misconduct as a result of the State calling a witness that offered false testimony. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests counsel be appointed and an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: PLGM
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 1, 2016.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE MILLANYO A. WOODY, 227810, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2015-CP-23-5718 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Millanyo A. Woody, 227810
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 1st day of July, 2016.

Judy A. Q. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

MILLANYO A. WOODY,	)	
	)	
APPLICANT,	)	2015-CP-23-05718
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

DECEMBER 9, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
P-1	LETTER 9/1/15 ----------	10	10

MR. SCHMECKPEPER: May it please the Court, Your Honor? This is Millanyo Woody versus the State of South Carolina, 2015-CP-23-5718. The Applicant was indicted for one count of a lewd act upon a child and one count of criminal sexual conduct with a minor, second degree. He was represented by Dorothy Manigault.

On October 14, 2013 the Applicant proceeded to a jury trial afterwhich he was found guilty and indicted. Judge Welmaker sentenced him to confinement for a hundred and seventy-seven months or fourteen years and nine months.

A timely notice of appeal was filed and perfected pursuant to Anders v. California. The South Carolina Court of Appeals dismissed the appeal on January 28th of 2015. The remittitur was issued February 13th, 2015. At this point I'm going to turn matters over to opposing counsel.

THE COURT: Mr. Ariail.

MR. ARIAIL: Yes, Your Honor. We're ready to proceed. And I call Mr. Woody to the stand.

THE COURT: All right. Mr. Woody, please come up and be sworn.

MADAME CLERK: Mr. Woody, please place your left hand on the Bible and raise your right hand.

Millanyo Woody, being duly sworn testified as follows;

MADAME CLERK: Thank you. You may be seated. Please

state your full name for the record.

MR. WOODY: My name is Millanyo Antonio Woody.

Direct Examination by Mr. Ariail:

Q. Mr. Woody, how you doing today?

A. I'm doing pretty good, sir.

Q. Good, good. I want to go back through a little bit of the information in your case. And you've heard the attorney general put on the record what charges Ms. Manigault represented you on, is that correct?

A. Yes, sir, it is.

Q. Okay. And so those are charges that you went to trial for and were convicted, is that right?

A. Yes, sir.

Q. Okay. Now when you were charged with these crimes you were arrested and placed at the law enforcement center, is that correct?

A. Yes, sir and no, sir. The charges that I went to trial for, I was never arrested for. Second degree, I was never arrested for that. So I was arrested for criminal sexual conduct, first degree.

Q. Okay. So what you're saying is there was a reduction of the charge at some time?

A. No, sir, it wasn't. I was never notified. There was -- it was two charges when I went to trial on the 14th.

Q. Uh-huh (affirmative).

A. One was dismissed. And the one that I was found guilty on was the second degree. I never was arrested or ever notified of any of those charges.

Q. Okay. So what you're saying is you were served with warrants for CSC, first, ---

A. Yes, sir.

Q. And what else?

A. And I think it was obscene material ---

Q. Okay.

A. --- and lewd act.

Q. Okay. Lewd act. So the one you said you did not receive notice of were or were aware of was CSC, second?

A. Yes, sir.

Q. You were okay with the other one, is that right?

A. Yes, sir. That's what I noted -- was notified of. That's what I was arrested for, yes, sir.

Q. Okay. Now -- and when I was going through that -- we'll go back into that in a little bit. As part of this you were represented and, I guess, Ms. Manigault was appointed for you, is that correct?

A. Yes, sir, she was.

Q. And did you get out on bond at any time?

A. Yes, sir. I was arrested August 5th, 2010. And I think I -- I got out on August 27th, ---

Q. Okay.

A. --- 2010.
Q. So you stayed out during the pendency of this, is that correct?
A. Yes, sir.
Q. So that happened -- you were tried on October 14th, 2013, is that correct?
A. Yes, sir.
Q. So that whole time you were out?
A. Yes, sir.
Q. Did you have any discussions with Ms. Manigault about what the case was about and the evidence and all that?
A. She -- she never really discussed too much of the case. We was just going over statements. So I never -- I never knew anything about an indictment, if that's what you're asking.
Q. And we'll go through that in a little bit. What you're saying is you weren't aware you were indicted for CSC, ...
A. Second. Yeah, that's right.
Q. Second is what you're saying?
A. Right. I knew I was arrested for first degree, you know, but I never, you know, I come to know -- understand what an indictment is by going to the law library, but she never explained an indictment to me.
Q. Okay. So there was no -- no discussion with you as to how it went from CSC, first, to CSC, second?

A. Right.
Q. Did she explain to you what the difference is between CSC, first, and CSC, second?
A. No, sir.
Q. So, I mean, tell me when the first time you were aware that you were going to trial and were going, you know, looking at CSC, second.
A. Well, she -- we went to trial January 16th. That's when she signed for a continuance. When I noticed it I was at the stand, and I saw my name down there, says, criminal sexual conduct, first degree and second degree, and lewd act. I noticed that on the document. But as far as her explaining it to me, no, I never noticed it. She never explained it to me.
Q. So you didn't have any, you know, understanding of what that was or ---
A. No, sir. I just saw it on -- I thought it was a misprint or something, you know.
Q. Did she tell you at any time, here's the difference between those two or what they've got to prove for those two?
A. No, sir, she didn't.
Q. Okay. Now going -- okay. So at some point in time you decide that you're going to try this case -- you wanted a trial.

A. Yes, sir.
Q. Were there any plea offers or any discussions before that about trying to work this out?
A. She gave me -- well, not a plea offer. I got a plea offer after I wrote the statement and asked them, you know, on page -- I'm sorry, get it together.

After the sentencing hearing Ms. Manigault had stated something in trial about a plea agreement from the State that I never received. So I wrote the State. And the State -- she sent me -- here it is right here. If I could use this as evidence.

On page 256, line 19 through 25, and 257, line 1 through 17, Ms. Manigault stated that she had gotten a great offer from the State pleading to dismissing of all pleas if plead to ABHAN and one year HIP with probation and no registration. She never conveyed that plea to me, Your Honor. And so I was wondering about that.

And I wrote the solicitor. And she gave me a letter, if I could use that as evidence, to the plea, for what I was to plead to.
Q. Let me see what it is. Have you already put it as part of your packet or is this ---
A. No, it's not part of my packet. That's what the State gave me right there. That was part of the plea agreement, but that she never conveyed to me.

Q. Okay. So ---
A. But that right there is what I never went to trial for. I never went to trial for that plea agreement.
(Pause)
MR. ARIAIL: Your Honor, if I could move this into evidence as Applicant's number 1.
MR. SCHMECKPEPER: No objection, Your Honor.
THE COURT: In without objection.
(Whereupon Plaintiff's exhibit 1 was marked and admitted into evidence)
Q. Now as part of this -- I just want to go through this. This was a letter you wrote to, it looks like, Ms. Munson ---
A. Yes, sir.
Q. --- at the solicitor's office on 9/1/2015, correct?
A. Yes, sir.
Q. Okay. And in return what you're saying you got is the plea offer that is undated and unsigned by Ms. Munson, is that correct?
A. Yes, sir.
Q. Okay. And you're saying that document is the plea offer you had never seen or aware of ---
A. That's right.
Q. --- before you received it back from the solicitor's office?

A. Yes, sir, that's correct.
Q. Okay. Now, I mean, clearly, I guess, if you'd received that what would you have done with that information, with that plea offer?
A. Well, Your Honor, if I'd received that that would've -- Your Honor, I'm not saying that I'm guilty, but it would've given me a better understanding of what was going on so I would have had the chance to even consider it if it was offered to me.
Q. Okay. So you're saying you didn't have any discussions with Ms. Manigault about any type of plea offer?
A. No, sir, I didn't.
Q. Okay.
A. Especially what she stated on this page right here on page 56. That's not -- on page 256, the plea agreement that you got, that's not what's on this page that she said that the solicitor gave her.
Q. Right. Okay. Now as part of the -- and what I want to make sure I understand is you went through this case, you had discussions with Ms. Manigault about discovery, correct?
A. Yes, sir.
Q. I mean, y'all talked. I mean, did she tell you this is what they're going to put up as evidence in this case?
A. No, sir. We received -- she signed a continuance for some evidence that she got on July 9th, 2013 that she never

conveyed to me. It was -- I guess it was a medical report. See, we never talked about any of that.

Q. Was that the medical report from Nancy Henderson ---

A. Yes, sir.

Q. Okay. And I want to go through, I mean, did you -- and the way this case was laid out, and the way I understand it, and the way the transcript is is basically there was a minor child who had indicated that she was sexually assaulted by you.

A. Yes, sir.

Q. Okay. Were you aware of what the allegations were and what she was going to testify to?

A. No, sir, I wasn't.

Q. Did you discuss with Ms. Manigault about any statements or any information that she had about what the minor child would testify to?

A. She had gave me some -- back in 2011 she gave me some statements.

Q. Okay. Was that from the minor child?

A. Yes, sir, from the minor child, from her uncle and from some more people I think that ---

Q. Okay. And I want to make sure who these people are because at the trial Tawanda Woody testified, ---

A. Yes, sir.

Q. --- Tamika Griggs testified, Quinton Largent testified.

A. Yes, sir.
Q. Did you have information on those individuals as to what they could testify to?
A. No, sir.
Q. I mean, so the statements that you got were not for these individuals?
A. The statement was from Mr. -- what was the name? Mr. -- it was -- forgive me. I'm kind of nervous.
THE COURT: All right.
A. Mr. Largent.
Q. Largent.
A. And the victim. Yes, I had statements for those, but not for the other people.
Q. Okay. But in this case, I mean, you were aware that it was going to come down to pretty much what the minor child said and some other stuff surrounding that, but were you aware or were you -- did you have a clear understanding of what the minor child may testify to?
A. No, sir, I didn't.
Q. But you had her statement?
A. Yeah, I had a statement. Yes, sir. She ---
Q. Go ahead.
A. She testified totally different to what was on her statement.
Q. Okay. And did you talk with Ms. Manigault about some

differences in what she testified to and what she said in her statement?

A. No, sir.

Q. Okay. Now we got to the trial -- and I'm trying to make -- make sure before we get to the trial that you had information. You're saying you didn't have everything you needed before trial?

A. No, sir, I didn't. I didn't ---

Q. What are ---

A. --- have everything.

Q. --- you saying that you needed that came up during trial that you were unaware of?

A. The doctor testified to a sexually transmitted disease. I never had any chance to see anything like that. I never saw the medical records, period. Ms. Manigault said she got them on the 16th, but I never had a chance to see anything like that.

Q. Okay. So you never had the medical records or any type of information about an STD?

A. No, sir. I received the medical information on October 21st, 2015 on the discovery when ---

Q. Okay.

A. --- I mailed it out.

Q. Okay. Now during the trial when this came up did you have a discussion with Ms. Manigault about it and say I

don't have this or, you know, we need to find out about this?

A. No, sir, I didn't know. I was naive. I didn't know anything about it until then. I was in shock, but I didn't -- I didn't say anything to her about it.

Q. What things in those medical records -- I know the STD, you had an issue with, but what things in the medical records do you say, well, I didn't know about this or these things that I needed to know that concerned you?

A. Well, the doctor testified. And I wish I could have had the medical record here. She testified that the child had a sexually transmitted disease, but on page 13 of the medical report it said that there was no such thing as a sexually transmitted disease detected in it.

Q. Okay.

A. And this was a medical report that was done on 10 -- on 2010, in April.

Q. Okay. And ---

A. I mean, I would have -- I'm sorry. I would have had the medical report, but, like I said, Mr. Brown was supposed to represent me. So he had all my medical reports.

Q. Right. Mr. Brown -- we talked about that. He had -- I guess you hadn't fully retained him, is that correct?

A. No, sir. I hadn't fully retained him. And he has all my information. So I couldn't even provide the medical

report that I gave him.

Q. Okay. And as a result -- that medical report, there were things in there that you said you weren't aware of. Did you ---

A. Right.

Q. --- discuss that with Ms. Manigault at trial?

A. No, sir.

Q. Okay. Now one issue -- and I'm walking through a lot of these things because I want to make sure I hit them like you said. One thing you've alleged and we've discussed is there were some questions about the medical testimony from Ms. Henderson, is that correct?

A. Yes, sir.

Q. I think you indicated there was a question you had in regards to bolstering of a witness, is that right?

A. Yes, sir.

Q. What -- what do you -- what was the basis for that?

A. Basically Ms. Manigault -- well, my trial counsel -- my trial attorney was -- she didn't object. She should have objected to the use of blossering [sic] in the testimony.

Q. Bolstering?

A. Bolstering, I'm sorry.

Q. Okay. I think it's -- the page number I have is 174 in the transcript.

A. Yes, sir.

Q. Okay.
A. Yes, sir.
Q. Your issue is that she was ---
A. Yes, sir. She was ineffective for failing to move for a mistrial to respond to the blossering [sic] of testimony of Dr. Henderson.
Q. Okay. And the bolstering that you're saying is that she was using Dr. Henderson as a means of testifying, I guess, about her interview and the findings she had being related to a physical exam that was done, is that correct?
A. Yes, sir.
Q. Okay. And you're saying that she should have objected to that to keep that information out?
A. Yes, sir. Because she was basically -- she was basically stating what the child had told her instead of like -- my understanding is a witness can testify, but not to the opinion. So an expert is allowed to testify to an opinion as long as it's based on what they've learned in her field of expertise. But to have her testify to what the child's saying is different. It's -- that's vouching for her credibility.
Q. Okay. The information, I think, -- this is from line -- you got your transcript ---
A. Yes, sir.
Q. --- to make sure I've got -- it's cite 174. And I

think it ties back with some other information.

But I think the question was, tell me if I'm correct, is line 6. Okay. So based on -- let me ask you this first. Do you have an opinion about how a minor got that injury? Well, I think based on the history that she has shared with me and the findings of her exam, including the lab-work that we did, this was due to a penetrating injury. And I felt it was consistent with the disclosure that she made to me.

A penile/vaginal penetration? Yes, ma'am. That was the answer. Is that -- is that what you're saying where the bolstering was in regards -- I think it ties back to some other information that she received in the transcript.

A. Yes, sir.

Q. Okay. Now -- I'm going back through making sure. I'm trying to make sure I covered the issues that we've discussed. And I know you prepared me some information to be able to -- let me ask you about -- have I covered -- are there other issues that you want to bring up to the Court at this time? And for your information, your packet that was filed initially is part of the record already, okay?

A. Yes, sir.

Q. So if there's anything you want to put, just let me know right now and we can -- we can go through that. Any other issues you have?

A. Yes, sir. There's an issue about trial counsel was

ineffective for failing to object to the use of the State's peremptory challenges, basically recognizing Batson versus Kentucky.

Basically I had a jury trial. There was thirty-five people summoned for jury. Thirty of them were Caucasian, three were African American and two were Hispanics. Out of the -- out of thirty-five, twelve were chosen. There was twelve Caucasians and one Hispanic. And Ms. Manigault failed to object.

Well, the solicitor, when juror 41 came up, she asked -- forgive me. Let me calm down. Juror 41 was a African American. And the solicitor struck her. And I asked Ms. Manigault, well, why did she strike her? But Ms. Manigault was trying to listen to the jury -- the judge making the decision.

So before the jury was sworn in she got to sit down -- the jury got to sit down. And I didn't get to understand why she told me to hold all questions until the end. But had she have objected to that, it would have been reviewable by the appellate defense if she had reviewed that.

Q. So you're -- let me make sure I'm getting this. You're saying -- are there questions about what the solicitor -- individuals the solicitor struck?

A. Yes, sir. She used one of her peremptory challenges to strike that -- to strike a African American woman. She was

a female.
Q. Just one?
A. Just one. That was -- there was only two there.
Q. So you only had two African Americans that were a part of the jury panel, is that correct?
A. Exactly. Yes, sir.
Q. She struck one.
A. Yes, sir.
Q. And you think that she should have had a Batson challenge to find out ---
A. Why ---
Q. --- what the reason for that was?
A. Yes, sir. Exactly.
Q. Okay.
A. And she ---
Q. When you asked her about it did she ever answer you or ...
A. No, she didn't. She gave me a piece of paper, and she was trying to listen to the judge, and told me to write down all my questions. Well see, at the time, I didn't know then that it was too late. They was already sworn in.
Q. Okay. Now -- okay. That issue, you got that one. Are there other things that I have not brought up that you want to discuss with the Court today?
A. Yes, sir. There's an issue with the indictments.

Q. Okay. Indictments. And you indicated that you were not indicted for CSC, second, is that correct?
A. Correct. There's an issue with the indictments being unconstitutional, broad and vague. Ms. Manigault should have objected to the indictments being overbroad and vague because they don't -- they're not specific in what's going on.

It says between December 4th, 2005 and April 22nd, 2010 that lewd act was committed. It doesn't have any specific details of what was going on, a date or anything. There was no way I could have a alibi or anything because they're not -- they're saying they don't know when it happened, just between these dates it happened.
Q. Okay. Did you discuss with her about those issues or have any conversation with her?
A. No, sir. I didn't discuss anything. We basically talked about the -- basically what me and Ms. Manigault was talking about was the statements that was written from the -- from the victim.
Q. Okay. Now I'm going to keep going. If there's any other things that I have -- we talked about discovery, plea offer. Any other items that you want to bring up?
A. Excuse me. Give me a second, please, sir, if you don't mind. Can I enter the indictments as evidence?
Q. If I'm not mistaken they've already been entered into

the ---

A. Okay, if they have. I just wanted to make sure.

Q. --- record.

Q. You're saying the indictments?

A. Yes, sir. See, this is where I'm confused at right there.

Q. Right here?

A. You see where it says -- indictment where it says two CDR code, that's first degree, and that statute there is first degree, but it says ---

THE COURT: All right. You need to speak up because we're trying to make a record ---

A. I'm sorry.

THE COURT: --- of this.

Q. And if I'm not mistaken, these are the same indictments that are made a part of the record already. Tell me what your concern is about these documents.

A. I guess that some of them look like they had been altered. You see how the A is on this paper right here? That's just not part of the record, I guess. That's an A that has been written in.

And it says the arrest warrant -- it says direct presentment. This is the second degree indictment that I never knew anything about. Okay. It has two CDR codes on it. It has a 3 -- a 0396 and a 0385. I've looked those up.

This is the first degree, but if the first degree was dismissed why is it on the second degree indictment?

Q. Okay. What you're saying is Ms. Manigault -- you didn't have a discussion with her and weren't aware of these indictments?

A. No, sir.

Q. Okay. And you're not -- and it's only dealing with the CSC, second degree, is that correct?

A. Correct.

Q. And not with the lewd act or other -- the lewd act charge, I guess?

A. That's correct. Yes, sir.

Q. Okay.

MR. ARIAIL: And, Your Honor, I believe these were made a part of the record ---

THE COURT: Well, I'm looking for them. They usually are. I see the lewd act. Let me go through them again.

MR. ARIAIL: Okay. If not I can submit them as an exhibit.

THE COURT: I see a sentencing sheet on the CSC, second, but I don't see the indictment attached. That's usually the way it is. And I see a sentencing sheet on the lewd act. And it does have the indictment. It's got the -- not the indictment, but arrest warrant.

Okay. Here's the indictment on -- he's got an A -- I

see where he's talking about -- that's ---

MR. ARIAIL: I think it's the same ---

THE COURT: I got that one.

MR. ARIAIL: That's the same one.

THE COURT: I got it. Okay.

MR. ARIAIL: Okay. Yours is redacted. So I guess that's -- he's got an unredacted version.

THE COURT: He's got a social security number and his date of birth off of it.

MR. ARIAIL: That's right.

THE COURT: You see that?

MR. ARIAIL: He's got the same copy except it's got redacted on it.

THE COURT: See, Mr. Woody?

A. Yes, sir.

THE COURT: And that's not on what you had because they don't want the world to know your social security number and your date of birth.

A. Yes, sir.

Q. So that's part of the record. We got that. Tell me -- anything else you want me to raise?

A. No, sir, that's about it. Can I -- can you go back to the indictments, though? Could I add one ---

Q. Sure. Tell me what ---

A. If you can turn to page 222, line 7 through -- 6

through 15. Could you read those for me? It has to do with the overbroad and vague indictments that Ms. Manigault did admit to it that she couldn't prepare a defense for it.

Q. Okay. This is in her closing argument.

A. Yes, sir.

Q. And you said 222, what line?

A. 7 through 15.

Q. Okay. It says all right. You know the thing about when you have a wide span and a gap like that, 2005 to 2006 to 2008 or 2010 is the gap, okay, it's hard for a person to defend it because the gap is so wide. Are there alibis? Well, you don't know because what they're saying is we don't know when it happened, but we know it happened all during that time.

So, I mean, if he was working, you'd have a certain date, and time and month, you could have gotten records from the job, but we didn't have a certain day, time and month. Is that what you're saying right there?

A. Yes, sir.

Q. Okay. Okay, that's good. I'm going to let them ask you questions now, okay?

A. Yes, sir.

Cross Examination by Mr. Schmeckpeper:

Q. Afternoon, Mr. Woody.

A. Yes, sir.

Q. I mean, you did testify that you discussed this case with your attorney. Did you say you -- she never went over discovery with you?

A. No, sir, she never went over discovery. We -- the medical evidence should have been part of discovery that she never even talked to me about. So ...

Q. So she didn't discuss the evidence of this case with you at all?

A. The ---

Q. Just the medical?

A. Yes, sir, not the medical.

Q. She didn't discuss the victim's physical injuries?

A. No, sir.

Q. So that was a surprise to you at trial?

A. Yes, sir.

Q. You've referred to a plea offer that she -- she put on the record, I think, on page 256 of the transcript?

A. Yes, sir.

Q. Now you said that was the first time you ever heard that?

A. Yes, sir. That -- that particular what she stated, yes, sir.

Q. Why didn't you say anything at that point?

A. I didn't know. I mean, I didn't know. I was in the sentencing phase. I didn't know. I was already upset and I

didn't know.

Q. All right. I think your attorney asked you whether or not you'd have taken it had you been told about it. And you said you would have considered it.

A. Yes, sir. Like I said, I pleaded not guilty. I would have considered it because it would have gave me a wider span of options to take.

Q. But would you have taken it?

A. Uh ---

Q. So your answer is you don't know if you would have taken it?

A. Well, like I said, I wasn't guilty. So I -- if it had been conveyed to me, then maybe I would have taken it, but it was never conveyed to me. So I can't say whether or not I would have took it or not because it was never conveyed to me.

Q. But at the time your attitude was you're not guilty, you're going to trial?

A. No, that's not my attitude. No, sir.

Q. No, at the time your attitude was I'm not guilty and so I'm going to go to trial?

A. No, sir, that wasn't my attitude. It was based on the evidence that I received that she gave me, that's what it was.

Q. Now you talked about Dr. Henderson's testimony. Do you

have a pretty clear recollection of what happened at the trial?

A. Yes, sir.

Q. Who was Dr. Henderson?

A. Dr. Nancy Henderson. She was the doctor that testified. Dr. Nancy Henderson.

Q. Do you know what her role was in the treatment of the victim?

A. According to the testimony to what she testified to from what I've read, yes, sir.

Q. Now she wasn't a forensic interviewer, correct?

A. Correct.

Q. She was an actual medical doctor, conducting a medical exam of the victim?

A. Correct.

Q. Looking for injuries and symptoms of abuse?

A. Correct.

Q. And this was for the treatment of the victim?

A. Correct.

Q. And she goes over what the victim told her in the course of the medical examination, is that fair to say?

A. I guess so, yes, sir.

Q. Whether or not it's true or not, whether or not the victim was being truthful, the doctor said what was said to her?

A. Correct.
Q. And then at a certain point the doctor discusses some injuries that the victim had?
A. Yes, sir.
Q. Do you remember what those injuries were?
A. She said she had a tear in the hymen.
Q. Tear in the hymen?
A. Yes, sir.
Q. And did she say how that could possibly occur?
A. In her statement she said that there was no way to date it. It was between 2006 and 2010.
Q. No, I didn't say when. I'm asking if she said how that could occur?
A. Uh ---
Q. Because your attorney brought that up on cross examination, right, that there was no way to date it?
A. No, sir.
Q. She did not bring that up?
A. No, sir. Well, I think she did. Yes, sir. I'm sorry. I'm thinking you was talking about Mr. Ariail.
Q. Oh, correct. Correct. And I guess my question is did she say how that injury could possibly occur?
A. Did she say how could -- she said it was a penile injury. That's what she believed it was.
Q. That's what she said it could be, right?

A. Yes, sir.
Q. Now you also alleged your attorney was ineffective for failing to raise Batson?
A. Yes, sir.
Q. And basically saying that your attorney should have objected because the solicitor struck an African American juror?
A. Correct.
Q. What is your reasoning for thinking -- are you saying she should have objected because the solicitor struck an African American juror or because the solicitor was striking an African American juror for racial purposes?
A. If it would have been a Batson hearing, sir, it would have been discussed in more detail, I think because ---
Q. But ---
A. There's certain levels on the Batson for discussion, I'm guessing. So I'm trying to understand what you're asking me.
Q. I'm just asking if you have any reason to suspect that the strike of that juror was racially motivated?
A. I mean, based on the twelve that was selected, it could have been, yes, sir.
Q. But do you have any -- what's your basis for thinking that that strike was racially motivated is what I'm trying to say?

A. It wasn't a fair cross section of my jurors, of my peers on the trial. What did I have in common with the twelve?

Q. So are you -- are you more concerned about the jurors who were in the overall juror pool or the actual jury that was selected?

A. A bit of both.

Q. Well, I guess what I'm asking is do you have any concrete reasons to suspect that the strike that was exercised was done for racial reasons?

A. Say it again. I'm sorry. Ask it again.

Q. Do you have any concrete reasons to suspect the solicitor struck that one juror based on race?

A. Yes, I believe she struck her based on race.

Q. I'm asking what makes you think that?

A. Because I have a *prima facie* case that I'm an African American. And if there's no African American representing me, how can I get a fair trial?

Q. And finally I'm just going to come to these indictment issues. And just so -- for the record, and I know you dispute the victim's allegations, but the victim in her testimony and to law enforcement alleged that you abused her one or two times over the course of a several year period?

A. Say that again. Repeat the question.

Q. Were the victim's allegations that you molested her one

or two times over the course of a four year period or were they that you continuously molested her over a several year period?

A. I guess it was over a period, I guess. That's what ---

Q. So she was saying it was continuous abuse whether or not you agree with that, ---

A. Yes, sir.

Q. --- that's what she was saying?

MR. SCHMECKPEPER: I have no further questions, Your Honor.

MR. ARIAIL: No redirect, Your Honor.

THE COURT: You can step down and have a seat with your attorney. Thank you. All right. Call your next witness.

MR. ARIAIL: Yes, Your Honor. I call Ms. Manigault to the stand.

MADAME CLERK: Ms. Manigault, please place your left hand on the Bible and raise your right hand. You do solemnly affirm to tell the truth, the whole truth and nothing but the truth so help you God?

MS. MANIGAULT: I do.

MADAME CLERK: Thank you. You may be seated. Please state your full name for the record.

MS. MANIGAULT: Dorothy A. Manigault.

Direct Examination by Mr. Ariail:

Q. Ms. Manigault, how you doing today?

A. Doing good.
Q. Good. I'm going to jump back to -- you represented Mr. Woody in regards to the criminal charges, I guess, CSC, second, and a lewd act, is that correct?
A. That's correct.
Q. Okay. I'm going to go over it real quick. I'm trying to understand this issue in regards to the indictments. There was a CSC, first, that he was apparently indicted for. It also shows a CSC, second, that he was indicted for. Do you know what the issue is or have you heard or understand this issue about the indictments?
A. Yes. He is correct that he was originally arrested for CSC, first. And there was a direct presentment for CSC, second.
Q. Okay.
A. And the CSC, first, when he was arrested on the date that he gave the Court is correct. August the 5th of 2010, I believe. And it was CSC, first, for a minor under -- less than eleven years old. Lewd act on a minor and disseminating obscene material to a minor.
Q. Okay. So at some point in time he, instead of getting indicted for a CSC, first, they indicted him for a CSC, second?
A. Correct.
Q. Okay. And do you know the reason behind that? What --

in his case?

A. In his case I think they were just dealing with the age ---

Q. Okay.

A. --- of the minor to try to get it more defined. That's my understanding.

Q. In other words then because of the age range or when the incident occurred, is that ---

A. Yes.

Q. Okay. Did you have, I mean, I guess he's brought up these issues in regards to these indictments and not aware that he was indicted for CSC, second. Do you remember having any discussions with him about that including the elements that were behind those charges?

A. Yes. I believe I first -- when he got out of jail Mr. Woody came to the public defender's office on October the 13th, 2010. We had an interview. And he made the complaint that he wanted all of his discovery. So we called him back in January of 2011, told him to come in to -- to make an appointment to pick up the discovery.

He came in on March 22nd, 2011 for an office interview. He was given a full copy of the discovery material that I had at that point and was informed that he -- anything that I would receive that we would continue to give it to him and provide it to him. And at that point we did go over the

discovery that was presented to him.
Q. Okay. At that time y'all went over it was he indicted for the CSC, second?
A. No.
Q. Okay. Did you explain -- so he had the CSC, first, at that time. Did you go over what they would have to prove in regards to CSC, first, and lewd act?
A. Yeah. We went over the touching for arousing with the lewd act. And we went over the CSC, first, and with the age of the victim. So we went over the elements of the charges that he originally had from August the 5th of 2010.
Q. Okay. Now as part of that, the evidence they had, he's indicated -- I'm not sure if he had all of it or was aware of some of the information. Did he -- did you give him or show him what you had received in discovery?
A. Yes. Discovery, as you're well aware in Greenville County, is a continuing activity. We don't get all of it necessarily up-front. But whatever was provided to me, I made sure that he was aware of it, received a copy of it or went over it with him because, as he said, he was adamant about getting a copy of his discovery.
Q. Okay. And as far as your records shows, you gave him a copy of that discovery?
A. I gave him the initial discovery that we had. He came into the office in 2012, 2013, before trial, he'd come to

the courthouse for -- he was summoned for guilty plea court day, ---

Q. Right.

A. --- days. He came several times for that. We've had -- we had discussions there in the conference rooms here. We even had a discussion with the solicitor's office.

Q. Okay. Two key pieces of information that I see in this case were the testimony of the minor child, ---

A. Um-hum (affirmative).

Q. --- and the testimony of Ms. Henderson.

A. Right.

Q. Was he aware of those two pieces of information?

A. Yes.

Q. Okay.

A. The information from the minor child was in the initial discovery.

Q. Okay.

A. Okay. Everything that the minor child had alleged, all that was in the initial discovery, initial report, initial statements. And the Dr. Henderson, I think that I had -- he was correct that I had filed for a continuance because they did not provide me a copy of it on the first -- he was on the trial docket several times.

Q. Right.

A. But one of the initial times that he was on the trial

docket, that information came up. I had -- I got an email from the solicitor that says she was going to use it. So I immediately told her I didn't have a copy of it, I needed it. We -- they provided a copy, went over the information that was provided in the Dr. Henderson report with my client at the courthouse.

Q. Okay. So he was aware of what she was going to testify to and what she would potentially say at trial?

A. Yes. Because the email that the solicitor sent, we were talking about the tear and the healing at the 9:00 position and went over that with my client to tell him. And his response is always she's lying, somebody else -- somebody else had sex with her, her mother had guys coming in and out of the house, it could have been one of them, it was not me. So he was aware of the information about her body.

Q. Okay. Now as part of this he's indicated that there was a plea offer that he -- we submitted into evidence. Were you aware of that plea offer?

A. Yes. In April 2012 he came to court and he said he wanted a jury trial. In June -- on June 28th, I think, it looks like, 2012 my notes says the defendant appeared in court with his mother and his, I think, fiancé at that time or wife.

Judy Munson gave a copy of the plea offer. A copy was

given to the defendant. Defendant was told to call the public defender's office to come in to discuss the plea offer. On the spot after we discussed it with the solicitor the defendant refused the plea offer on June 28th, 2012.

Q. June 28, 2012?

A. Right.

Q. Okay.

A. However, the plea offer, up until a couple of months before trial, the actual trial date, ---

Q. Right.

A. --- the plea offer remained open.

Q. Okay.

A. Ms. Munson allowed it to remain open, which was against her general policy, but she remained -- let it open.

Q. Okay. In this case we've heard him testify -- he -- it was his position that he was not guilty and he wasn't pleading guilty, is that ---

A. That was his position. He says that he's not guilty, he wants a jury trial.

Q. Okay. There was part of the trial we went through he said that there was some information that came out, and I think it was an STD and some medical records that were used that he was unaware of.

A. Uh-huh (affirmative).

Q. Did you have that information prior to going into

trial? Were you aware of that?

A. The testimony -- you talking Dr. Henderson?

Q. Yes.

A. Okay. Whatever was provided on the report from Dr. Henderson I had, yes, before trial.

Q. Okay. Were there other things -- and maybe if she's looked at medical records, she's done stuff -- were there other things that were submitted or made part of the record that you didn't have during trial that you ---

A. Nothing was submitted or made a part of the record except her testimony.

Q. Okay.

A. Dr. Henderson's testimony. So she was testifying about her examination ---

Q. Right.

A. --- of the -- she was testifying about her examination that she'd examined the child twice.

Q. Okay.

A. 2006 and 2010. 2006 was nothing. 2010 revealed some -- some activity that she testified about.

Q. Okay. Now as part of that there was testimony he said about an STD.

A. Yes.

Q. Were you aware of that before trial or was that new information that you had received?

A. I can't say that I specifically received a statement on STD, ---

Q. Okay.

A. --- disease, but whatever was in her report is what I received.

Q. Okay.

A. Now her -- like he said, he -- she may have testified more fully about her examination and the results of her examination that was not in the report.

Q. Okay.

A. Okay.

Q. Now we've heard, and I've gone through, and you've read the transcript or looked at the transcript. There was a question that he has in regards to whether or not Dr. Henderson bolstered the testimony of the minor child.

A. Okay.

Q. And some testimony about whether or not after a review -- her review -- an interview is consistent with some type of penile penetration. During the trial you didn't object. Was there any reason for that or do you remember anything surrounding that?

A. If I didn't object I didn't think it -- I didn't perceive it to be bolstering.

Q. Okay.

A. She was, like you said, the medical doctor examining a

patient and describing the injuries or tears that she saw and giving information about what would it be consistent with.

Q. Okay. So it was your position that you would object if you felt it was objectionable and you just felt at that time it wasn't?

A. Correct.

Q. Okay. Now that's an issue that he's raised. And my understanding there was only two African Americans that were part of the jury panel. One that must have been selected and was stricken by the prosecution. Do you remember any type of Batson issue that you could have objected to during jury qualifications or selection?

A. No, I do not. I kept my jury selection notes and the jury information sheets. And he is correct that number 41 was a black female that was struck, but I didn't see any issues on Batson at that point.

Q. Okay. So at that -- at that time you didn't see any reason to object or request a Batson hearing?

A. No.

MR. ARIAIL: Your Honor, I have no further questions.

THE COURT: All right. Counsel.

Cross Examination by Mr. Schmeckpeper:

Q. Good afternoon.

A. Yes.

Q. I'm going -- I'm going to touch back on these other things you've already testified about.
A. Okay.
Q. And just to clarify, would you go over for the Court, for the record and explain to the Court your background as a criminal defense attorney. Just general -- just in general.
A. Okay. I've been practicing -- I graduated from -- in '74. I've been practicing -- I was a prosecutor in Richland County, Fifth District, for about three years. I've been practicing as a contract public defender for over fifteen years and a part-time public defender for about seven years.
Q. Now you were appointed in this case, correct?
A. Correct.
Q. And you talked about meetings. Do you remember how many times you met with the Applicant roughly? And I know -- not exactly, but ...
A. Do I know how many times I met with him?
Q. Generally, yes.
A. Generally? Okay. In the office I would say more than -- probably more than seven to eight times. In the courthouse coming for court in what we call guilty plea days was probably like five more -- five additional times or more because he had come to court several times for the plea court time.
Q. And just because there's been some, perhaps,

conflicting testimony, would you just express again whether or not you went over discovery with him?

A. Yes, I did. I went over the discovery. I provided the discovery for him on March 22nd, 2011. We went over it then. He, as I said, he appeared on June 28, 2012, was given a copy of the plea offer. And we had discussion with Ms. Munson at the time.

Q. And is that -- is that the plea offer that you put on the record in the transcript?

A. They put on the record.

Q. Okay.

A. I think it was their plea offer. But the plea offer got better as the time went along.

Q. And did you -- did you continue to update the Applicant?

A. Yes. He came to my office on July 24th, 2012. We discussed the plea -- he brought with him Shirley Woody, his mother, and Indiana -- India, sorry, Bookey Woody, then his wife. We discussed the plea offer. We discussed the discovery. The plea offer eventually evolved to the defendant could enter a guilty plea or an Alford plea to ABHAN, assault and battery of a high and aggravated nature, one year HIP with no registry.

Q. And did you convey that to him?

A. I conveyed that to him in the presence of his mother,

his wife, he said, was India, he did not want it. He did not want it.

Q. Okay. I know we've talked a lot about discovery, dates and what you conveyed to him.

A. Uh-huh (affirmative).

Q. I know you can't read the Applicant's mind, but based on what you told him and what you continued to tell him up til the time of the trial and the information you conveyed to him do you think he could have had an adequate understanding of the State's case against him?

A. I think he had more than adequate understanding because in July and October of 2013 we went over the defense strategy. No challenge to the report of 2006, let it in because it was unfounded. He was never charged and never arrested, if they wanted to put it in.

And no challenge to the 2006 medical report where the child was saying that somebody else had messed with her, a little boy, because it wasn't the defendant. The reason is that the -- the victim in the case, he's saying, lies a lot and tells a lot of stories. So we would not object to those reports coming in or that testimony coming in because it was unfounded as to him.

Q. And just to touch -- I apologize for interrupting.

A. That's fine. I'm finished.

Q. Just to touch base on these indictments, do you recall,

and I can show you the document if you'd like, when the Applicant was actually indicted for these crimes?

A. No. I'd have to look at the ---

MR. SCHMECKPEPER: Your Honor, may I approach?

A. --- indictment.

THE COURT: Yes, sir.

Q. Was he indicted more than two weeks before trial?

A. Yeah, he -- yes, it looks like, if I'm reading it properly.

Q. Roughly -- roughly a year before trial?

A. Yeah, he was indicted 2012.

Q. And his trial date was October 14th, 2013?

A. That's correct.

Q. And that was the -- do you mind if I get that back?

A. Oh, okay.

Q. And I know the Applicant testified to this and the record will reflect it. In terms of frequency what was the -- what was the basic allegations from the -- from the victim in terms of the frequency or consistency of abuse over the course of the years?

A. She was testifying to touching, to him showing her obscene materials in a car going places with him and advances by him over a -- the period of time that was alleged. She said that he came into the house and had sex with her, or touched her or tried to interject his penis

into her vagina. So it was a continuing -- her story was a continuing allegation over that time-frame.

Q. So this wasn't once in summer of 2008, once in fall of 2009, maybe twice in the spring of 2010?

A. Yeah, it was -- it's continuing.

Q. Consistent and continuous abuse?

A. Yeah.

Q. Now I know you mentioned in your closing argument the range of the allegations. Were you able to prepare this case based on -- were you on notice what the Applicant was being charged with based on the indictments?

A. I was on notice. We were on notice.

Q. Were you able to prepare a defense?

A. We prepared as best we could. The defendant was, as he's testified, he had consistently said that the range is just too far, too wide. And that was my argument to the jury hoping that they would buy some of it. But the testimony of the minor child, she presented a good witness. I'll say it like that.

Q. Now the Applicant also alleged a Batson violation. I guess my question for you is whether or not you had any specific reason to think that any of the solicitor's strikes were racially motivated?

A. I did not. Like I said, I generally try to keep my jury notes and information, strikes for both parties. And

reviewing that I didn't see any in hindsight and I didn't see any at the point, at that time.

Q. And if you had thought maybe that some of those strikes were racially motivated what would your reaction have been?

A. Would have asked for a hearing on the Batson issue.

MR. SCHMECKPEPER: I beg the Court's indulgence.

(Pause)

Q. Now if you could, just turn your attention to a portion of the transcript that refers to Mr. -- Ms. Henderson was testifying. And I think the specific portion that the Applicant was referring to is 174, line 7 through 14. And I'm going to be asking you questions you've probably already answered. Just to clarify, was this a forensic interview?

A. No.

Q. Was Ms. Henderson qualified or ever referred to as a forensic interviewer?

A. No.

Q. What was her profession?

A. She was a medical doctor. And she -- generally her examinations were of minors. That's the best I can recall at this point. But she was never presented as a "forensic expert".

Q. And what -- what was the purpose of the examinations?

A. The purpose of the examination is because the child had claimed that somebody had messed with her. The first time

was 2006.

Q. So was the purpose of these examinations medical treatment?

A. Yes. The purpose of the examination was there was a tear or problems that the child, the young lady was having. So the examination on the medical basis was to examine the area to see what was going on with her.

Q. So throughout the examination disclosures to the doctor would have been for the purpose of medical treatment?

A. Yes.

Q. Did Dr. Henderson ever testify at trial that she believed that the victim was abused?

A. No.

Q. Did she ever testify that she believed the victim?

A. No.

Q. What would you have done if she had -- if she had said that?

A. Objection, bolstering.

MR. SCHMECKPEPER: Your Honor, I have no further questions. Thank you, Ms. Manigault.

MR. ARIAIL: Nothing further, Your Honor.

THE COURT: All right. You can step down.

A. Thank you, Your Honor.

THE COURT: Well, before -- before you step down just a minute -- do you have any other witnesses?

MR. ARIAIL: No, Your Honor.

THE COURT: This was a direct indictment. Was he ever arraigned on the indictment?

A. I was looking through my notes. If he was arraigned it was one of the times during -- coming to the guilty plea. And I meant to call Ms. Munson to see whether she had any notes on it.

But on direct indictment, they usually just bring them in on the guilty plea days, not the trial week and do -- do the reading -- presentation of the court, tells them of the new offense. So I don't have any independent recollection, Your Honor, but I was going to call Ms. Munson to see whether she had any.

THE COURT: All right. Well, I suggest that -- and I'm not going to put the burden on you because you're just a witness, on the State to find out if there's any record that he was arraigned on the direct indictment, criminal sexual conduct in the second degree.

MR. SCHMECKPEPER: Yes, Your Honor.

MR. ARIAIL: Thank you, Your Honor.

THE COURT: You can step down.

A. Thank you, Your Honor.

THE COURT: All right. Anything else?

MR. ARIAIL: No, Your Honor, that's our case.

THE COURT: All right. Well, I'm going to take this

one under advisement. Is this the one you wanted to do a brief on?

MR. SCHMECKPEPER: Yes, Your Honor. Literally only if Your Honor would find it helpful. If not, I'd be more than happy to send ---

THE COURT: Well, I believe it would. And particularly on the -- oh, the time-frame, the specificity of the indictment. I particularly would like some research on that. I think I know what the law is, but it would help. As to the other issues, I don't think I need any -- anything on those.

MR. SCHMECKPEPER: Nothing on the bolstering issue, Your Honor?

THE COURT: Well, I think I know bolstering pretty well. And I've looked at her testimony. And I don't think I really need anything on that. But the -- there's some specific cases dealing with the on, or about, or between, and I just don't have them in my head. And I'm going to ask you and you can share it with Mr. Ariail once you have that. But that's the thing I might like a little help on.

MR. SCHMECKPEPER: And then as far as addressing the indictment issue, I know Your Honor requested me to find out if he had been arraigned. Would you like me to include that in the brief?

THE COURT: Well, I think that's more of a fact issue.

And what I'm going to suggest with that is that -- I really don't know what to do other than to say that if -- whatever information you receive from Ms. Munson -- could do two things.

You could prepare an affidavit, although that would negate Mr. Woody's opportunity to cross examine her. Mr. Ariail, what do you suggest? If we hear from Ms. Munson that she has some information involving the direct indictment that he was arraigned ...

MR. ARIAIL: I wouldn't have a problem trying to get her to submit something in writing or if she wants to do an affidavit just saying we presented it and she's got information, that might be the easiest thing for the Court and we can put it as part of the record.

THE COURT: Okay. Well, that -- we'll do it that way. And if after that you or your client has any question about that, we'll cross that bridge.

MR. ARIAIL: Yeah.

MR. SCHMECKPEPER: Is there a specific date you'd like this by, Your Honor?

THE COURT: Any date?

MR. SCHMECKPEPER: Just so I can put something on my calendar.

THE COURT: December 25th.

MR. SCHMECKPEPER: December 25th?

THE COURT: No, I'm just kidding.

(Laughter)

THE COURT: We'll say by the end of the year.

MR. ARIAIL: Thank you, Your Honor.

(Hearing Ended at 12:41 pm)

(End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 9th day of December 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 25, 2017

S/*Susan W. Hudgins*

_____

Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Millanyo A. Woody, SCDC No. 227810, Applicant, vs. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2015-CP-23-05718 ORDER ENTERED COMPUTER

Applicant filed this Application for Post-Conviction Relief September 17, 2015. This matter was heard December 9, 2016. Applicant was represented by R. Mills Ariail, Jr., Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the September 2012 term of the Greenville County Grand Jury for one count of Lewd Act Upon a Child (2012-GS-23-07385) and one count of Criminal Sexual Conduct with a Minor, Second Degree (2012-GS-23-07386A). Dorothy Manigault, Esquire, represented Applicant.

On October 14, 2013, Applicant proceeded to trial where he was found guilty as indicted on all charges. The Honorable G. Edward Welmaker sentenced Applicant to confinement for 177 months (fourteen years, nine months).

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to *Anders v. California*, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

dismissed Applicant's appeal. *State v. Woody*, Op. No. 2015-UP-056 (filed on January 28, 2015). The Remittitur was issued on February 13, 2015.

In his Application for Post-Conviction Relief, Applicant alleges he is being held in custody unlawfully and that his trial counsel was ineffective. In support of this claim Applicant alleges four grounds with seven subparts. Applicant subsequently amended his application to include an additional ground with two subparts and three additional grounds pertaining to ineffective assistance of counsel. The Court will address the grounds presented at the hearing. All grounds not presented by Applicant at his hearing are deemed waived as abandoned.

Where Applicant and trial counsel testified differently as to matters of fact, I find in all such instances credibility lies with trial counsel.

Applicant alleges ineffective assistance of counsel as a ground for relief. In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. *See Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this

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presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. 2052 (1984)).

Applicant's second claim is an allegation that he was denied due process of law in violation of certain amendments to the Constitution of the United States of America. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set for the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). In this case, to the extent covered by Applicant in his hearing, the Court will address what claims appear to fall within the parameters of the constitutional violations claim.

Applicant alleges prosecutorial misconduct as a result of the State calling a witness that offered false testimony. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201 (1989). Based on Applicant's testimony, the Court finds no evidence which supports Applicant's claim of prosecutorial misconduct.

In addition to the issues raised by Applicant in his application and amendments, the Court, *sua sponte*, raised concern as to whether or not Applicant had been arraigned on the direct indictment under which he was tried. Applicant testified he was never arrested for the charge for which he was tried. This is true as he was tried by virtue of a direct indictment. The issue is addressed herein below.

Applicant testified he never discussed his case with trial counsel and in almost the same breath testified he "went over statements with trial counsel." Trial counsel testified that she did meet with Applicant and went over the elements of the charges.

Applicant testified trial counsel never went over a plea offer with him, Applicant testified that he just knew of the offer at trial and that he did not have time to consider the offer. Trial counsel testified that she relayed to Applicant the State's offer, and that Applicant claimed he was not guilty and refused the offer "on the spot." Trial counsel testified that Applicant claimed he was

not guilty and wanted to go to trial. Additionally, the record belies Applicant's claim regarding his position relative to his plea. (*See* TR p. 256, l. 14 through p. 257, l. 3).

Applicant testified a Dr. Henderson, M.D., not a forensic interviewer, bolstered the child victim's testimony. Applicant directed the court to page 174, lines 6-14 of the trial record. The exchange at the referenced page is as follows:

> Q: Okay. So based on – let me ask you this first. Do you have an opinion about how Minor got that injury?
>
> A: Well, I think based on the history that she had shared with me and the findings on her exam, including the lab work that we did, that this was due to a penetrating injury, and I felt it was consistent with the disclosure that she had made.
>
> Q: Of penile vaginal penetration?
>
> A: Yes, ma'am.

(TR p. 174, ll. 7-15 (questions by solicitor, answers by Dr. Henderson)).

Earlier Dr. Henderson had testified that the victim had told her about a person "touching her all over her body;" then the victim shared "about penile/vaginal penetration" and shared "about bleeding related to that incident." (TR p. 167, l. 25 through p. 126, l. 3).

Dr. Henderson was qualified as an expert in "the field of child abuse pediatrics." (TR p. 163, ll. 10-11). Dr. Henderson was employed by Greenville Health Systems and was head of the division of forensic pediatrics. (TR p. 158, ll. 18-23). She testified her duties included doing consults when there's a "concern of child abuse." (TR p. 158, ll. 24-25).

While the answer here and the question by the State in *State v. Berry* (Sup. Ct. Appellate Case No. 2015-002580, December 2, 2016) appear at first blush to be identical, the Court finds they are not as set forth herein below.

While not technically qualified as a forensic examiner, there can be no question as to this case that Dr. Henderson's examination was for forensic purposes. To the extent our case law addresses forensic interviewers, it provides guidance on the issue of witness bolstering. In this regard, the Court need look further than the case of *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013).[1] The *Kromah* court listed several kinds of statements that a forensic interviewer should avoid at trial. These include:

1. Any statement that indirectly vouches for the child's believability
2. Any statement to indicate to a jury that the interviewer believes the child's allegations

Dr. Henderson's testimony that her findings on examination were consistent with the description the child had made as to penile vaginal penetration is a statement that the child victim was truthful as to that issue. While this testimony indicates that the interviewer believed the child's allegations of penile penetration, the testimony does not vouch for the child's believability in general. While this appears to be the exact type of testimony *Kromah* warns against, as set forth below, the Court finds that Dr. Henderson's testimony did not bolster the child victim's testimony.

Trial counsel testified she did not object to the testimony noted above simply because she did not think it was objectionable. In this case Dr. Henderson testified as a medical doctor who

[1] In what the undersigned believes can only be described as dicta, the Supreme Court stated "...although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors have a tendency to attach more significance to the testimony of experts."

conducted a medical examination of the alleged victim. While she testified basically as a forensic expert, she was not testifying as a forensic interviewer. Dr. Henderson's focus was not on any assertion by the minor victim as to the sexual battery, beyond her medical findings. Dr. Henderson's testimony bolsters the victim's testimony only as to whether or not the victim's vaginal area showed signs of penile intrusion. Dr. Henderson objectively found evidence of penile/vaginal penetration. She testified that such finding was consistent with the victim's testimony that she had been so penetrated.

Dr. Henderson testified that her physical examination of the victim revealed a "healed tear of her hymen" (TR p. 168, ll 9-10); that the type of tear she found "is due to some type of penetration across the hymenal tissue" (TR p. 169, ll. 4-5); that such tears are unusual absent "sexual abuse" (TR p. 169, ll. 14-15); and that the injury observed in the victim's vaginal area was due to a "penetrating injury." (TR p. 144, ll. 7-15).

Dr. Henderson's testified that the penetrating injury she observed *based on her findings on examination* was "due to a penetrating injury." Dr. Henderson was not vouching for the victim's believability or bolstering the victim's testimony. Dr. Henderson simply testified that her objective finding and the victim's disclosure of vaginal penetration was consistent with her physical findings. The fact that the child victim informed the doctor as to how her vaginal area was injured does not equate with believability. Here what Dr. Henderson testified was to substantiate not the credibility of the victim, but the results of her physical exam.

Trial counsel was not ineffective for not objecting to Dr. Henderson's testimony regarding the victim's disclosure having been confirmed by the doctor's physical exam. Again, the testimony is not that the victim was believable, but rather that the physical exam confirmed the child's oral statements to the doctor as part of her medical history.

Next the Court addresses the issue of whether or not Applicant was arraigned on the direct indictment on which he was tried. At the Court's request, counsel for both parties were asked to explore the issue. Counsel for the State, having checked with the Greenville County Solicitor's office, advises the Court that there is nothing definitive on the arraignment of Applicant. That is, there has been no record found of an arraignment of Applicant on the direct indictment here at issue.

Since Applicant was prosecuted on a direct indictment the Court *sua sponte* raised the question as to whether or not Applicant had been arraigned on the direct indictment. At the time of the hearing neither counsel, nor trial counsel, could answer this question. The Court gave counsel time to, post-hearing, find whether or not Applicant had been arraigned. Counsel for the State, per an email from same, states that the trial solicitor, Ms. Munson, was unable to confirm Applicant's arraignment. Counsel for the State stated that Ms. Munson was "unable to find any records...to confirm it." The Court has received nothing from Applicant addressing this arraignment issue.

Since arraignment is neither a statutory nor constitutional right, but is rather a "mere formality," the absence of arraignment does not violate a defendant's due process rights as long as the accused has sufficient notice and an adequate opportunity to defend himself. *State v. Ariail*, 311 S.C. 35, 426 S.E.2d 751 (1993). Arraignment is not a jurisdictional requisite. *Id.*

Here, Applicant testified he was arrested on a warrant for Criminal Sexual Conduct, First Degree under S.C. Code Ann. § 16-3-652 (1976 as amended). The direct indictment on which he was tried was, as noted above, for Criminal Sexual Conduct With a Minor, Second Degree under S.C. Code Ann. § 16-3-652 (1976 as amended). Both Criminal Sexual Conduct, First Degree and

Criminal Sexual Conduct, Second Degree have as their pivotal element the commission by defendant of a "sexual battery."[2] Each requires that same be committed on a "victim."[3]

The arrest warrant for First Degree Criminal Sexual Conduct is not part of the record before the Court. Trial counsel testified that the difference between the charge for which Applicant was arrested and the charge set forth in the direct indictment was the allegation of the victim's age in the direct indictment. Applicant testified he was aware of the direct indictment (referred to by him as a document) but claims trial counsel never explained to him the difference between the two charges. Trial counsel testified she in fact did explain the differences to Applicant.

In *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 716 (1959), one of several grounds on direct appeal was Mayfield's assertion that he was never arraigned. This assertion was not supported by the record. The Court found that two basic factors weighed against the Defendant's assertion as set forth in an affidavit presented by him. There was his plea of not guilty of the charge to which he was tried and the presumption of regularity in the trial proceedings.

In the instant case, Applicant was, as noted above, aware he was charged with a Criminal Sexual Conduct with a Minor in the Second Degree. By proceeding to trial with this knowledge, Applicant waived arraignment. Also, there being no evidence to overcome the presumption of regularity in this proceeding, in considering the absence of proof that Applicant was arraigned, the Court must presume he was properly arraigned.[4]

From the above it is clear Applicant was aware that he had been charged with Criminal Sexual Conduct With a Minor, Second Degree and had the charge explained to him. Trial counsel

[2] Defined at 16-3-650, S.C. Code of Laws 1976, as amended.
[3] Defined at 16-3-651, S.C. Code of Laws 1976, as amended.
[4] As to the presumption of regularity, *see also Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995); *State v. Jones*, 321 S.C. 75, 472 S.E.2d 38 (1942).

testified she had the State's discovery and had discussed the State's evidence and the facts of the case with Applicant. A review of the trial transcript exhibits that trial counsel was thoroughly prepared for trial.

Therefore, based on an *Ariail, supra*, analysis, whether or not Applicant was arraigned on the charge of Criminal Sexual Conduct With a Minor, Second Degree is of no moment. Applicant was aware of the accusations against him and was adequately defended.

The Court addresses the arraignment issue even though not raised by Applicant since the Court raised the arraignment question at Applicant's hearing. Applicant neither raised any issue regarding arraignment nor presented any testimony relevant to the issue.

As to trial counsel's failure to object to, or move to quash the indictment, the Court finds trial counsel was not ineffective. At the time of Applicant's trial the current law as to whether time periods in indictments were overbroad was *State v. Baker*, 390 S.C. 56, 700 S.E.2d 440 (Ct. App. 2010). In *Baker*, the Court stated, "time is not a material element of committing a lewd act upon a minor" or "of criminal sexual conduct with a minor." *Id.* at 61, 700 S.E.2d at 443. The indictment in *Baker* encompassed a six year and three month span of time in which Baker was alleged to have committed Lewd Acts Upon Minors (five counts) and Criminal Sexual Conduct with a Minor (one count). The Court of Appeals' *Baker* opinion was reversed by the South Carolina Supreme Court in February 2015.

Trial counsel was not ineffective for failure to move to quash the indictments in Applicant's case. Our courts have never required an attorney to anticipate or discover changes in the law which did not exist at the time of trial. *Thomas v. State*, 310 S.C. 306, 426 S.E.2d 764 (1993).

Applying the *Strickland* and *Cherry* standard to trial counsel's representation, the Court finds that trial counsel provided to Applicant representation within the range of competence required in criminal cases. The Court finds trial counsel's performance in her representation of Applicant reasonable under professional norms.

The Court finds Applicant has failed to carry his burden of proof as to any of the claims in his Application for Post-Conviction Relief. Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. *See* Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

January 13th, 2017
York, South Carolina

John C. Hayes, III
Presiding Judge

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

8/5/2010

DOCKET NO. 2012-GS-23- 037386A
JMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September **TERM 2012**

10-16-13

THE STATE

vs.

MILLANYO ANTONIO WOODY

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
B/M
DOB: [redacted]/1975
SS# [redacted]
2012GS2307386A

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty
Bobby G Stuckey

10/15/2013

Foreperson of Petit Jury
Date:

10396
0385

Indictment for

CRIMINAL SEXUAL CONDUCT W/ A MINOR SECOND DEGREE (OLD)

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
) CRIMINAL SEXUAL CONDUCT W/ A MINOR SECOND DEGREE
COUNTY OF GREENVILLE) (OLD)

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MILLANYO ANTONIO WOODY did in Greenville County, between the 4th day of December 2008 and the 22nd day of April 2010 commit a sexual battery on Minor who was fourteen years of age or less but who was at least eleven years of age. This is in violation of §16-3-655(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

007395

DOCKET NO. 2012-GS-23-
JMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September **TERM 2012**

THE STATE

vs.

MILLANYO ANTONIO WOODY

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

WITNESSES

Michael Robertson

Greenville County Sheriffs Office

8/5/2010

ARREST WARRANT NUMBER
I481854

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Bobby H. Stuck

12/15/2013

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Greenville County present upon their oath:

That MILLANYO ANTONIO WOODY did in Greenville County, between the 4th day of December 2005 and the 22nd day of April 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Minor ., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR